HON'BLE SRI JUSTICE K.G.SHANKAR

Second Appeal No.465 of 1994

Date: 12-04-2013

Between:

Kosuru Venkata Raju .. Appellant/
Respondent No.2/
Plaintiff No.2

AND

Kosuru Venkata Raju (died)
per L.Rs (respondents 4 & 5)
and others .. Respondents/
Appellants/
Defendants

HON'BLE SRI JUSTICE K.G.SHANKAR

Second Appeal No.465 of 1994

JUDGMENT:

The suit by the plaintiffs for perpetual injunction was decreed by the trial Court. The defendants 1 to 3 preferred an appeal assailing the judgment of the trial Court. The appeal was allowed.

2. The second plaintiff later filed the present second appeal. The second appeal was dismissed as abated against the defendants 2 & 3, who are respondents 2 & 3 herein, on 05.08.1998.

The respondents 4 and 5 are the legal representatives of the first defendant. The second plaintiff and defendants

1 to 3 are brothers.

3. On 06.04.2004 the second appeal was dismissed for default by this Court. However, on 01.09.2006, the appeal was restored to file. No one appeared on behalf of the appellant-second plaintiff.

4. Sri K. Bhaskar, learned counsel for the defendants 2 & 3 placing reliance upon ***Arigela Laxmi v. Boddireddy Chandraiah***[1] submitted that the very second appeal is not maintainable against the respondents 4 & 5 who are the legal representatives of the first respondent when the appeal was dismissed for default against the defendants 2 and 3. In that case, one of the plaintiffs died. The suit for declaration of title and perpetual injunction was dismissed. The first appeal was preferred against the dismissal order. During the pendency of the first appeal, the third plaintiff died. His legal representatives were not brought on record within the prescribed time. Consequently, the appeal stood abated as against the third plaintiff. A learned single judge of this Court observed that such abatement is fatal to the entire appeal since the plaintiffs as appellants have been claiming common ownership and possession.

5. In the present case, it is the contention of the learned counsel for the defendants 2 & 3 that the interest of defendants 1 to 3 is identical and that once the appeal

is dismissed against the defendants 2 & 3 for default, appeal does not survive as against the first defendant.

6. In view of the decision cited and in view of the provisions of Order XXII Rule 3 C.P.C., it is evident that once an appeal is dismissed against some of the respondents, it does not survive against the other respondents when the cause of action is common for all the respondents. I, therefore, consider that this appeal does not survive as the appeal was already dismissed against the defendants 2 and 3.

7. Consequently, the second appeal is dismissed on the ground that it does not survive against the respondents 4 and 5. No costs.

K.G. SHANKAR, J

Date: 12.04.2013
lsn

[1] 2003 (1) ALT 565